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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MLL - 177731

PRELIMINARY RECITALS

Pursuant to a petition filed on October 31, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on December 1, 2016, at Milwaukee, Wisconsin.

The issue is whether a Medicaid Lien on Petitioner's property may be lifted.

NOTE: The record was held open until December 8, 2016, to allow the parties to supplement the record. DHS submitted a stipulation entered into by DHS and the Petitioner in June 2012. It has been marked as Exhibit R-5 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Budget and Policy Analyst
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner's father, ■, passed away on July 3, 1999. He had owned a home in Milwaukee. After ■'s death, Petitioner and his mother, ■, continued to live in the home. (Exhibit P1, pg. 4; Testimony of SI)
3. Petitioner's mother, ■, received Medicaid benefits between 1996 and 2009. (Exhibit R-1, pg. 3)
4. ■ passed away on January 9, 2009. (CCAP Printout; <https://wcca.wicourts.gov/index.xsl>)
5. A petition for the administration of the estate was filed on August 19, 2010, in Milwaukee County Circuit Court. (Id.)
6. ■'s will was filed on August 20, 2010, and on November 16, 2010, the will was approved and Petitioner was appointed as Personal Representative of the Estate. (CCAP Printout; <https://wcca.wicourts.gov/index.xsl>)
7. On November 29, 2010, the State of Wisconsin filed a claim against ■'s estate for \$142,387.69. (Exhibit R-1, pg. 2; CCAP Printout; <https://wcca.wicourts.gov/index.xsl>)
8. On June 12, 2012, the Petitioner, with the assistance of an attorney, filed an Application for the Termination of Decedent's Interest and Confirmation of Applicant's Interest in Property to transfer ■'s home to the Petitioner. (Exhibit P1, pg. 4)
9. On June 14, 2012, the Petitioner obtained a Personal Representative's Deed for the home. (Exhibit P1, pg. 5)
10. On June 14, 2012 and June 19, 2012, Petitioner's attorney and DHS entered into a stipulation, in which it was agreed:

That the home was the only asset of ■'s estate.

That the home was appraised at \$38,000.

That DHS's claim \$142,387.69 against ■'s estate was denied.

DHS would receive a lien for \$22,150.03 for the home. (Exhibit R-5)
11. On June 27, 2012, a Medicaid Estate Lien was filed in court in the matter of ■'s estate. (Exhibit R-3)
12. On June 29, 2102, a stipulation and order was entered in probate court and on July 12, 2012, the estate was closed. (CCAP Printout; <https://wcca.wicourts.gov/index.xsl>)
13. Petitioner is legally blind, and has been so since at least December 2010. (Exhibit P1, pgs. 25-26; Exhibit R-2, pg. 25-26)

DISCUSSION

The Wisconsin Department of Health Services (DHS) is required to file a claim against the estate of deceased MA recipients for the purpose of recovering the amount of MA paid on behalf of the recipient. Wis. Stat. §49.496(3)(a) 2009-2010; Wis. Admin. Code §DHS 108.02(10)(a); *Medicaid Eligibility Handbook (MEH)*, §22.1.5

DHS attempted to file a claim against ■'s estate, but as part of a stipulated agreement, DHS waived the estate recovery, in exchange for a lien on the home that Petitioner inherited. That lien was entered by the probate court in Milwaukee County.

Petitioner's son, on Petitioner's behalf, filed an appeal to have the lien lifted. While Wis. Stats. §49.496(2)(b) 2009-2010 does states that, "the department may not obtain a lien under this subsection if any of the following persons lawfully reside in the home: 1. The recipient's spouse. 2. The recipient's child who is under age 21 or is disabled..." and Petitioner might have been disabled at the time the lien was granted, the fact remains that the lien was entered by the circuit / probate court.

The Division of Hearings and Appeals does not have jurisdiction to overturn or reverse an order of the circuit/probate court. If Petitioner would like to have the lien lifted, he would need to petition the probate court. He might wish to contact Legal Action of Wisconsin (414) 278-7222; toll free 888-278-0633), if he requires free or reduced cost legal assistance.

I note to Petitioner that, generally, if the home is sold while Petitioner is alive, DHS will waive the lien, since Petitioner is a disabled adult child of [REDACTED]. Under Wis. Stats. §49.496(2)(f) 2009-2010, "the department may not enforce a lien under this subsection after the death of the recipient, as long as any of the following survive the recipient...2. A child who is under age 21 or disabled..." If the home is sold after Petitioner is deceased, DHS will collect the lien, but if the home is sold for less than the lien amount, DHS will collect the proceeds, but not the balance of the lien. However, Petitioner or his son might wish to contact [REDACTED] [REDACTED], whose contact information is in Exhibits R-1 and R-5, to discuss his specific circumstances and the effects of the lien.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have legal authority to lift a Medicaid Lien already entered in circuit court.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of January, 2017

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 9, 2017.

Division of Health Care Access and Accountability